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D. T. E. 98-32-D

Investigation by the Department of Telecommunications and Energy into the Model Terms and Conditions concerning capacity assignment, peaking service and default service submitted on November 3, 1999 by the ten investor-owned natural gas local distribution companies.

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COMPANY

BERKSHIRE GAS COMPANY

GAS COMPANY

COMPANY

COMPANY

GAS COMPANY

COMPANY

GAS COMPANY

GAS AND ELECTRIC LIGHT

COMPANY

ATTLEBORO GAS COMPANY

THE

BLACKSTONE

BOSTON GAS

COLONIAL GAS

COMMONWEALTH

ESSEX GAS

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## I. INTRODUCTION

On July 18, 1997, the Department of Telecommunications and Energy ("Department") directed Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex Gas Company, Fall River Gas Company, Fitchburg Gas and Electric Light Company and North Attleboro Gas Company (collectively "LDCs") to initiate an industry-wide collaborative process to develop a common set of principles for the comprehensive unbundling of the Commonwealth's natural gas industry. Informed by reports submitted by the Massachusetts Gas Unbundling Collaborative

With the exception of the LDCs, participation in the MGUC is voluntary. Other participants in the MGUC are interstate natural gas pipelines, wholesale and retail marketers of natural gas and related services, the representatives of several groups of customers, various government agencies, and the Department itself.

Close ("MGUC" or "Collaborative") the Department, on April 7, 1998, opened a notice of inquiry, docketed as D.T.E. 98-32 on how to move to a more competitive natural gas industry in Massachusetts.

Since the Department voted to open this investigation, it has issued three related Orders: D.T.E. 98-32-A, issued on November 30, 1998, approved partial Model Tariff Terms and Conditions; D.T.E. 98-32-B, issued on February 1, 1999, required a transition period of mandatory assignment for local distribution

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company-owned upstream pipeline capacity and downstream peaking resources; and D.T.E. 98-32-C, issued on April 2, 1999, approved an interim settlement of unbundling issues, pending the development of final Model Tariff Terms and Conditions and Regulations. On November 3, 1999, the LDCs filed with the Department those portions of the Model Tariff Terms and Conditions that were previously omitted from the partial Settlement of Model Tariff Terms and Conditions approved in NOI - Natural Gas Unbundling, D.T.E. 98-32-A (Nov. 30, 1998) ("LDC Filing"). We note that we have also commenced a rulemaking proceeding, docketed as D.T.E. 98-32-E, to establish regulations governing the unbundling of services related to the provision of natural gas. Pursuant to the published notice, written comments concerning the proposed rules are due on or before January 28, 2000, and the Department will conduct a public hearing on February 4, 2000. Rulemaking - Natural Gas Unbundling, D.T.E. 98-32-E Legal Notice at 1-2 (1999) (Legal Notice published in Massachusetts Register No. 886, Jan. 7, 2000).

Close Although the LDC Filing is not called a settlement by Collaborative participants, the LDCs state that the filing incorporates the results of several months of discussion and negotiation between the LDCs and competitive gas marketers and incorporates the modifications on which agreement was reached (LDC Filing at 2). The proposed Model Tariff Terms and Conditions consist of section 13.0 (capacity assignment), section 15.0 (default service) and section 16.0 (peaking service) (id. at Att's.). We note that the Model Tariff Terms and Conditions also contain components to be added to the previously-approved Model Tariff Terms and Conditions. See NOI - Natural Gas Unbundling, D.T.E. 98-32-A Order Approving Partial Model Tariff Terms and Conditions (1998). For instance, the LDC Filing contains definitions related to capacity assignment, default service and peaking service which appear in section 2 of the Model Tariff Terms and Conditions. As these other components are supplemental to the substantive proposed Model Tariff Terms and Conditions, we will refer to the LDCs' Filing as consisting of sections 13, 15 and 16.

Close If the filing is approved, the LDCs anticipate that tariff compliance filings and consumer-education efforts may be developed, approved, and implemented in time for all customers to have the opportunity to purchase natural gas supplies from competitive suppliers on April 1, 2000 (id. at 2). The Department expects that the MGUC will file its customer education plan and electronic business transaction report for our review prior to the transition to full retail choice.

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Pursuant to notice duly published, timely comments were submitted from the following interested persons: The Attorney General of the Commonwealth ("Attorney General") and Reliant Energy Retail, Inc. ("Reliant"). On December 10, 1999, the Department issued an initial set of information requests to each LDC regarding the potential cost implications of certain of the proposed Model Terms and Conditions ("Information Requests"). Further, in order that such responses would not delay the implementation of full unbundling on April 1, 2000, the Department requested each LDC to file its responses with its tariffs-to-be-filed to implement natural gas unbundling (Information Requests at 1).

## II. POSITIONS OF THE COMMENTERS

### A. Attorney General

The Attorney General points out that customers of all but three of the LDCs pay an average (rather than a load factor based) cost for their gas supplies (Attorney General Comments at 1, n.1). As the capacity allocation provisions of the Model Tariff Terms and Conditions provide that migrating customers will be assigned capacity based both on their service area-specific location and load factor, the Attorney General remarks that such de-averaging will necessarily result in some rate impact (id. citing LDC Filing, Att. at §§ 13.2.1, 13.3.1, and 13.4.3). The Attorney

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General recognizes, however, that these impacts have not yet been estimated or considered by the Department (id. at 1-2). Accordingly, given these circumstances, the Attorney General states that the Department must continue to apply its rate continuity principles and reject any final tariff filing which leads to unacceptable rate impacts (id. at 2).

#### B. Reliant

Reliant does not oppose the Model Tariff Terms and Conditions proposed by the LDCs (Reliant Comments at 1). However, Reliant notes that its failure to oppose the LDCs' Filing should not be interpreted as an affirmative endorsement of the retail unbundling process in Massachusetts (id.). Instead, Reliant makes two suggestions regarding the near-term development of retail competition: First, Reliant urges the Department to re-examine its mandatory assignment decision articulated in D.T.E. 98-32-B before the expiration of the three-year period adopted in that Order because that decision essentially forces third-party suppliers to assume the same cost-structures as the LDCs with whom they are competing. And second, Reliant agrees with the Department's determination to develop standardized tariff language because such standard terms and conditions bring increased efficiencies to the retail supply function and, thus, are beneficial to every participant in the Massachusetts retail gas market. Nonetheless, Reliant suggests that the Department recognize that industry-wide (i.e., national) standards, such as those under development by the Coalition for Uniform Business Rules, may have even greater benefits (id. at 2-4). Accordingly, Reliant urges the Department to recognize that the Model Tariff Terms and Conditions are not a static work and to allow for consideration and future adoption of proposed consensus revisions (id. at 3-4).

#### III. DISCUSSION AND DETERMINATIONS CONCERNING THE COMMENTS OF THE ATTORNEY GENERAL

We note that no participant in the MGUC opposes, beyond the generalized dissatisfaction expressed by Reliant, the Model Tariff Terms and Conditions submitted by the LDCs.

Reliant does not oppose the LDCs' Filing (Reliant Comments at 1). Rather, Reliant makes two more-general comments regarding the Model Tariff Terms and Conditions as a whole (id.). Those Comments are summarized in section II.B., supra, and, as they are not apposite to the instant matter, will not be discussed here.

Close We have reviewed the LDCs' Filing and we conclude that the proposed Model Tariff Terms and Conditions implement the mandatory assignment of upstream and downstream capacity resources in a manner consistent with our determination in D.T.E. 98-32-B. In addition, because the Model Tariff Terms and Conditions facilitate the provision of the broadest possible choice and provide all customers with an opportunity to share in the benefits on increased competition, we conclude that the proposed terms and conditions are consistent the achievement of our regulatory goals as expressed in our Order opening this inquiry, D.T.E. 98-32 (1997). Accordingly, for the above-stated reasons, the proposed Model Tariff Terms and Conditions consisting of section 13.0 (capacity assignment), section 15.0 (default service) and section 16.0 (peaking service) are hereby approved because they are in the public interest.

However, we share the concerns of the Attorney General that the implementation of the Model Tariff Terms and Conditions could lead to unacceptable cost-shifting due to the required de-averaging of LDC-system capacity costs. In order to quantify and understand the magnitude and nature of these potential cost shifts, the Department on December 10, 1999 issued a set of information requests to each LDC. Responses to our information requests must provide the information required to settle the question raised about de-averaging and cost-shifting, if any there be. We recognize, however, that the Model Tariff Terms and Conditions, although containing a method to allocate capacity, do not incorporate the applicable capacity allocators (see LDC Filing at Att. at § 13.3.8 stating "The Capacity

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Allocators for each class of Customers billed under the Company's Schedule of Rates shall be set forth annually in Appendix [x] to these Terms and Conditions." ). Therefore, company-specific capacity allocators remain to be reviewed and approved in each LDC's compliance tariff filing. Thus, we see no reason to delay our issuance of this Order while we wait for the LDCs to perform those required calculations.

Although we must retain our authority to apply our principles concerning rate continuity in the event the responses disclose unacceptable cost shifts, such principles ought to be applied during our individual adjudications of each company's implementing tariffs. As noted in section I. above, the Department issued its information requests on December 10, 1999. Given that the LDCs' Filing was submitted without material opposition (a fact known to the LDCs through their participation in the MGUC), and with a target implementation date of April 1, 2000, we presume that each LDC has already begun, if not completed, drafting tariffs consistent with the Model Tariff Terms and Conditions. Moreover, we presume that each LDC has already begun, if not completed, preparing responses to our information requests – responses which, in any event, are not contingent upon our approval here. Finally, we note that the implementing tariffs already exist in model form and that individual LDCs will be under a heavy burden to justify any departures from the approved terms. Thus, for these reasons, we hereby require each LDC to submit for Department review and approval, not later than 21 days from the date this Order, the following items: (1) company-specific tariffs that implement natural gas unbundling in accordance with the Model Tariff Terms and Conditions approved in this Order and in NOI - Natural Gas Unbundling, D.T.E. 98-32-A (1998); (2) a redline, strikeout version of such company-specific tariffs that disclose any and all differences from the Model Tariff Terms and Conditions approved in this Order and in NOI - Natural Gas Unbundling, D.T.E. 98-32-A (1998) together with a statement justifying any and all differences; and (3) company-specific responses to the Department's Information Requests originally issued on December 10, 1999. The Department has set-aside the following docket numbers in order to accept and investigate the LDCs' compliance filings:

	Bay State Gas Company, D.T.E. 00-12
00-13	The Berkshire Gas Company, D.T.E.
(investigation of Blackstone Gas	Blackstone Gas Company, D.T.E. 00-14
on January 25, 2000 for a "hardship waiver" from	Company's request, filed submitting compliance tariffs).
	Boston Gas Company, D.T.E. 00-15
	Colonial Gas Company, D.T.E. 00-16
00-17	Commonwealth Gas Company, D.T.E.
	Essex Gas Company, D.T.E. 00-18
	Fall River Gas Company, D.T.E. 00-19
Company, D.T.E. 00-20	Fitchburg Gas and Electric Light
00-21	North Attleboro Gas Company, D.T.E.

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IV. ORDER

Accordingly, after due notice and consideration, it is hereby

ORDERED: That the proposed Model Tariff Terms and Conditions consisting of section 13.0 (capacity assignment), section 15.0 (default service) and section 16.0 (peaking service) be and hereby are approved; and it is

FURTHER ORDERED: That Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex Gas Company, Fall River Gas Company, Fitchburg Gas and Electric Light Company and North Attleboro Gas Company, shall, not later than 21 days from the issuance of this Order, submit company-specific tariffs for Department review and approval that implement natural gas unbundling in accordance with the Model Tariff Terms and Conditions approved in this Order and in NOI - Natural Gas Unbundling, D.T.E. 98-32-A (1998); and it is

FURTHER ORDERED: That the company-specific proposed tariffs submitted for Department review and approval by Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex Gas Company, Fall River Gas Company, Fitchburg Gas and Electric Light Company and North Attleboro Gas Company shall clearly identify any and all differences from the Model Tariff Terms and Conditions approved in this Order and in NOI - Natural Gas Unbundling, D.T.E. 98-32-A (1998); and it is

FURTHER ORDERED: That Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex Gas Company, Fall River Gas Company, Fitchburg Gas and Electric Light Company and North Attleboro Gas Company shall, not later than 21 days from the issuance of this Order, as part of each's company-specific tariff compliance filing, submit responses to the Department's Information Requests originally issued on December 10, 1999.

By Order of the Department,

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner